

No. 17-

IN THE
Supreme Court of the United States

CORNELIUS OGUN SALU,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SAN DIEGO, APPELLATE DIVISION

PETITION FOR A WRIT OF CERTIORARI

CHARLES N. GUTHRIE
Counsel of Record
121 Broadway, Suite 531
San Diego, California 92101
(619) 230-8598
charlesnguthrie@aol.com

Counsel for Petitioner



QUESTION PRESENTED FOR REVIEW

1. WHEN A MIDDLE SCHOOL TEACHER COMPLAINS WITH EMAILS, AND TEXTS CONTAINING PROFANITY TO HIS PRINCIPAL AND SCHOOL DISTRICT THAT HE WAS WRONGLY FIRED AND ASKING FOR HIS JOB BACK, DOES CHARGING HIM CRIMINALLY WITH A MISDEMEANOR ANNOYANCE LAW VIOLATE HIS RIGHT TO PETITION GOVERNMENT TO REDRESS A WRONG UNDER THE FIRST AMENDMENT?

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California Constitution

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The Petitioner, Cornelius Ogunsalu respectfully petitions for a writ of certiorari to review the judgment of the Superior Court of the State of California, County of San Diego, Appellate Division.

OPINION BELOW

The November 1, 2017, Opinion of the San Diego County Superior Court, Appellate Department. (App., *infra*, 1a - 7a) The opinion of the San Diego County Superior Court, Appellate Department is not published.

JURISDICTION

Petitioner was convicted of violating three misdemeanor counts of California Penal Code 653m(b), annoying electronic communications, and judgment of sentence was pronounced by the Superior Court of the State of California, County of San Diego on August 7, 2015. Petitioner was placed on summary probation. (App., *infra* 10a – 12a) Petitioner's case was appealed to the Superior Court of the State of California, County of San Diego, Appellate Division. The Appellate Division entered its judgment affirming Petitioner's conviction on November 1, 2017. (App., *infra*, 1a - 7a) The State of California, San Diego Superior Court, Appellate Division on November 16, 2017, denied a rehearing of the appeal and denied the Appellant's Application for Certification to the Court of Appeal, Fourth District Court of Appeal, Division One. (App., *infra* 8a) On December 19, 2017, the Court of Appeal, Fourth District Court of Appeal, Division One, denied Appellant's Petition to Transfer his appeal to that court for review. (App., *infra* 9a) In California, an appeal cannot be made to the California Supreme Court for a denial

of a transfer of a case within the appellate jurisdiction of the Superior Court. (CRC 8.500(a)(1)) Meaning, the California Supreme Court will not review a misdemeanor appeal that a district court has denied transfer to review. The Court of Appeal, Fourth District Court of Appeal, Division One, being the highest court in California which Petitioner's misdemeanor appeal could be taken and its denial of transfer to review being December 19, 2017, and this Petition for Certiorari being filed within 90 days of denial of transfer, (Rule 13.1), jurisdiction of the Supreme Court is invoked under Title 28, United States Code Sec. 1257(a).

STATUTORY PROVISION INVOLVED

California Penal Code, Sec. 653m(b) states:

Telephone calls or contact by electronic communication device with intent to annoy
. . . (b) Every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device, [emails/texts] or makes any combination of calls or contact to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business.

STATEMENT

Cornelius Ogunsalu, a black¹ history teacher at Bell Middle School in the City of San Diego Unified School District, after he won a back pay dispute through his union, was not rehired by the San Diego Unified School District. Thereafter in hundreds of nasty, colorful and some racial emails/ and texts Ogunsalu complained to the principal of his school, Michael Dodson, also black, as well as others in the school district that he, Ogunsalu, had been wrongly fired and demanded reinstatement of his teaching position.

Mr. Ogunsalu was charged and convicted of three counts of 653m(b), which makes it illegal to intentionally annoy another person by repeatedly, electronically sending communications to them. On appeal, the San Diego County Superior Court, Appellate Division found 653m(b) protected Mr. Ogunsalu's right to petition government and cited a case involving a customer making complaints to an ice cream company. (Discussion infra)

A. The Unconstitutional Use of P.C. 653m(b), to Enforce Politeness in Petitions to Government.

This case is about whether citizens petitioning government can be charged with an annoyance law, California Penal Code 653m(b) for the purpose of, or defacto result of silencing citizens who use curse words, and nastiness in their emails and text petitions to government complaining of government wrongs and

1. Relevant to the context of racial remarks from one black man to another.

requesting government redress those wrongs. This case asks whether government can enforce politeness laws to weaken the Petition Clause of the First Amendment.

Although 653m(b) has been previously challenged as to its constitutionality, the challenging cases were annoying communications between private citizens, and the California courts found in those cases 653m(b) constitutional. (*People v. Astalis* (2014) 172Cal.Rptr. 3d 568, and *People v. Hernandez* (2nd Dist. 1991) 231 Cal.App.3d 1376) Ogunsalu's appeal is the first time 653m(b) has been challenged when applied to a citizen communicating a complaint to government and asking redress. *Astalis*, and *Hernandez* involved communications sent between private individuals about private concerns. *Astalis* was a man disgruntled because another man was living with the mother of his children and he placed 40 postings on the other man's Facebook claiming the mother was mentally unstable (*Id.* Pp. 570-571) *Hernandez* involved a lady who had been restrained by a court order from contacting a man that she at one time had a romantic relationship and she made multiple communications to an apartment house manager blaming her for the breakup using nasty language. (*Id.* Pp. 1380-1381)

People v. Powers 193 Cal.App. 4th 158, cited by the San Diego Superior Court Appellate Division, in affirming Petitioner's conviction found 653m(b) was constitutional; however, *Powers* involved a customer complaining to an ice cream factory- not a citizen petitioning government.

B. Proceedings Below

The San Diego Superior Court, Appellate Division found that Mr. Ogunsalu's communications were "threatening and vulgar" and contained "implied threats of violence, . . ." further finding "The right to petition like the right of free speech, is not absolute." (*Wolfgram v. Wells Fargo Bank* (1977) 53 Cal.App.4th 43, 56) (App., infra, 4a - 5a) In the court's affirming Petitioner's conviction it specified examples of Mr. Ogunsalu's emails and texts it found not protected by the First Amendment:

The next day, he [Petitioner] sent Dodson [Principal of Bell Middle School] a series of emails, . . . Stating "things would get ugly" if Dodson didn't tell the school board that he was making a mistake regarding defendant. . . . and another called Dodson an "Uncle Tom Negro" and warned, "You should not fuck with me." . . . Another, referring to Dodson, stated, "Fuck you and burn in hell." (App. Infra 2a)

The Appellate court cited *People v. Powers* (2011) 193 Cal.App. 4th 158, as protecting Petitioner's right to "petition" his school district in good faith and in the normal course of business. (App., infra 4a - 5a) Powers was not on point because it did not deal with petitioning government for redress of wrongs; but instead, decided whether a customer complaining to a complaint taker at an ice cream company could be charged with 653m(b) — Powers overturned the defendant's conviction reasoning complaint takers were less likely to be offended than others, as that was their job.

REASONS FOR GRANTING THE PETITION

With the advent of the internet, email and texts, there is a new age of electronic means for citizens petitioning government of grievances. A citizen exercising his Petition Clause powers should be allowed exercise those powers without being restrained by politeness laws. Petitioning government should be allowed in a manner that allows full expression of a citizen's displeasure and what remedy he desires. Allowing 653m(b) used to put impolite petitioners in jail chills free speech. Unless words in the petition incite violence, or the petition language appeals to prurient interest, government must accept the petition without punishing the petitioner.

I. The Petition Clause Was Meant to be Rude, and Annoying

The purpose of the First Amendment's Petition Clause goes to communications by citizens to government and not to protect the feelings of government workers who receive complaints. It can be reasonably inferred the drafters of the First Amendment's Petition Clause did not foresee petitions to government composed of polite words. The First Amendment was crafted in a surrounding reality of a Revolutionary War, which was being waged over government wrongs; people were being killed in the streets. *Edwards v. South Carolina* 372 US 229, 235-236, used the 14th Amendment to apply the First Amendment Petition Clause to the states. Also, the California Constitution guarantees the right to petition government. (Cal. Const., Art. I, Sec. 3 (a))

653m(b) which forbids repeated annoying electronic communications when applied to individuals petitioning the government violates the Petition Clause of the First Amendment because it is OK for a petition sent government to be rude, vulgar and inferentially threatening.

The whole purpose of a petition to government is to annoy and get attention. Even if 653m(b) is appropriate to constrain normal citizens from annoying each other, the purpose of petitioning government is to annoy.

II. The Supreme Court has handled analogous cases involving nasty language.

This Supreme Court found that a vulgar expression against the government draft, “Fuck the Draft” was not sufficient to violate a California disturbing the peace law, Penal Code 415 (*Cohen v. California* 403 US 15); (which expression was worn on a shirt in a courthouse) and in so doing, cited *Baumgartner v. United States*, 322 US 665, 673-674 (1944); indicating, “One of the prerogatives of American citizenship is the right to criticize public men and measures-- and that means not only informed and responsible criticism, but the freedom to speak foolishly and without moderation.

Mr. Ogunsalu’s speech did not rise to the level of fighting words and it was pure speech in written form without conduct. As such it does meet the Chaplinsky test where a Jehova’s Witness called a police officer, to his face, a facist. Chaplinsky was a Supreme Court Case standing for conduct and words inciting violence can be made illegal. (*Chaplinsky v. New Hampshire* 315 US 568 (1942)) Mr. Ogunsalu’s case is one of pure speech.

III. The Question is Important

Allowing enforcement of 653m(b) against citizens complaining to government chills the freedom to petition government. This is not to say government cannot make reasonable laws as to the number of emails, or addresses to which they may be sent for purpose of petitioning government of grievances and asking for redress, or even restrict language that could incite riots or violence, or is lewd, and appealing to prurient interests.

The right to petition government harkens back to Oliver Cromwell bringing the Magna Charta to King Charles I. The right to petition is a right that cannot be regulated as were it a domestic dispute/ or civil dispute. A dispute though it may be, complaining to government is a sanctioned/ protected communication and cannot be regulated by law into the politeness of normal parlance. The government worker, like the complaint taker at the ice cream factory in Powers, is mandated to take petitions of complaint and arguably cannot be annoyed as it is the government workers' job to receive petitions from citizens, polite petitions as well as rude, vulgar, and even inferring violence, like in Mr. Ogunsalu's case.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

CHARLES N. GUTHRIE

Counsel of Record

121 Broadway, Suite 531

San Diego, California 92101

(619) 230-8598

charlesnguthrie@aol.com

Counsel for Petitioner

March 14, 2018

APPENDIX

1a

**APPENDIX A — DECISION/STATEMENT
OF THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA, COUNTY OF SAN DIEGO,
APPELLATE DIVISION, FILED
NOVEMBER 1, 2017**

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA COUNTY OF SAN DIEGO
APPELLATE DIVISION**

Appellate Division No.: CA263754
Trial Court Case No.: M190960
Trial Court Location: Central Division

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff(s) and Respondent(s),

v.

CORNELIUS OGUNSALU,

Defendant(s) and Appellant(s).

**DECISION/STATEMENT OF REASONS
(CCP § 77(d)) BY THE COURT**

APPEAL from the judgment of conviction entered by the Superior Court, San Diego County, David M. Gill, Judge. Following argument on October 26, 2017, this matter was taken under submission.

AFFIRMED.

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Defendant was found guilty following a jury trial of three counts of electronic harassment in violation of Penal Code section 653m, subdivision (b) and one count of violating a court order in violation of Penal Code section 166, subdivision (a)(4).¹ On appeal he claims several constitutional and instructional errors require reversal of his convictions. We disagree and affirm defendant's convictions.

Facts

Defendant was a probationary teacher at Bell Middle School in San Diego. In March 2014, he was informed by the school principal, Michael Dodson, that he would not be rehired. Defendant was initially allowed to continue his teaching position until the end of the school year, but after sending a disparaging email to Mr. Dodson, school board members, the District Superintendent, and Human Resources personnel, defendant was placed on paid administrative leave. The next month, on April 25, 2014, defendant sent Dodson an email promising state and federal investigations and a lawsuit. The next day, he sent Dodson a series of emails, including among others, ones that threatened litigation, stating that "things would get ugly" if Dodson didn't tell the school board that he was making a mistake regarding defendant. One email was captioned "it's SHOWTIME!" and stated defendant

1. The complaint alleged six counts. The jury found defendant not guilty of Count Four and was unable to reach a verdict on Counts One and Two (all counts alleging violation of 653m, subdivision (b)). Counts One and Two were ultimately dismissed by the court pursuant to Penal Code section 1385.

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was ready to make his first move and “you picked the wrong probationary teacher to fuck with,” and another referenced Clive Bundy, called Dodson an “Uncle Tom Negro” and warned, “You should not fuck with me.” The next day, April 27, 2014, defendant sent additional and similar emails to Dodson.²

On April 28, 2014 (Count 3), defendant continued with another series of similar angry, insulting, threatening and vulgar emails to Dodson. One warned Dodson that he would be investigated for embezzlement, stating “In your face, nigga!” Others, sent to a human resources employee and copied to Dodson, stated defendant’s desire to “whip Dodson’s ass and put him in his corner” and that defendant had “some bleach to make your high yellow skin white, a swiping disease-infested cess pit vermin.” Another, referring to Dodson, stated, “Fuck you and burn in hell.”

In May 2014 (Count 5), defendant sent Mr. Dodson over 50 similar text messages. Just one example was: “... to Saint motherfucking vermin and piece of foul black turd. Jackass. Adult that likes to eat shit will definitely throw up when it visits a cess pit to eat shit. Figure that out....”

In October 2014, a complaint was filed against defendant alleging several counts of violating Penal Code section 653m, subdivision (b); and on November 17,

2. Samples of some of these emails include one stating, “You getting warm, M.F.”; one stating, “Going to light a fire in your ass that will hurt for years”; and one calling Dodson a “punk high yellow uncle Tom piece of asswipe” and threatening to destroy his career.

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2014, defendant was arraigned. At the arraignment, the court ordered defendant not to have contact with several individuals, including Mr. Dodson. In February 2015, defendant sent Dodson another series of texts in violation of the court order (Counts 6 and 7). One example was: “Now you see why you are a clueless fucktard and jack ass? So I am ready and not moving on with my life as your punk – ass bitch motherfucking brainless, clueless piece of dog shit is recommending, how dare you.”

At trial, defendant testified and acknowledged sending the various emails and texts. He claimed that he felt there was no way for him to let go of his pain, stress, emotions, or anger. He felt he had no other outlet and was severely depressed. He also believed Dodson was responsible for all of his problems and was the only person who could correct the injustices he suffered. Defendant testified that when he copied Dodson on emails to others, his intent was directed at Dodson not at the other people who received the emails.

Unanimity

Without citation, defendant argues that “when more than one person could be the victim of a specific intent crime, the victim *has to be named on the verdict form* in order for the verdict to be unanimous.”³ He is incorrect. A

3. The jury instruction that set forth the elements of Penal Code section 653m, subdivision (b) provided in part: 1. *The defendant made repeated contact with another person by means of an electronic communication device, and 2. The defendant made the contact with the intent to annoy or harass another person.* The alleged “person”

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unanimity instruction is only required when necessary to the jury's understanding of the case. (*People v. Beardslee* (1991) 53 Cal.3d 68, 93.) Defendant never requested an instruction on this point but, without determining whether defendant waived his right to a "victim" unanimity instruction, we find that one was not required and, even if required, any error was harmless beyond a reasonable doubt under the facts of this case. (See *People v. Lueth* (2003) 206 Cal.App.4th 189, 195-196; see also *Chapman v. California* (1967) 386 U.S. 18, 87 S.Ct. 824 [harmless error standard].) ⁴

First, throughout the course of the trial, it was clear that Mr. Dodson was the intended victim of each count, which may be why defense counsel felt no need to request further instruction. A review of the numerous emails and texts reveals, and defendant acknowledged in his testimony, that Mr. Dodson was the clear and only target of defendant's ire. All of the communications used to support the charges were either sent directly to Mr. Dodson or copied to him. Those copied to Dodson had

was not named in the complaint or on the verdict forms.

4. We note that the court did instruct regarding unanimity of "intent" on different emails in response to a jury question. The jury asked: "If the intent changes from one communication to another within a single count, how do we parse out the intent? Is it the majority of communications? Or is the original intent come to bear? (sic)" The court responded, with approval of defense counsel: "If the evidence proves beyond a reasonable doubt a course of repeated contacts as separately alleged in Counts 1-6, and that at least some of the contacts were accompanied by the required specific content, you need not all rely on the same contacts to find guilt."

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clear references to him. For example, Exhibit 80, an email to Bernadette Nguyen and copied to Dodson, stated: “Remember, my BEEF is with Dodson!!!!” Ultimately, the emails in question included insults, vulgar descriptions, or veiled threats directed at Mr. Dodson, not others. We are convinced beyond a reasonable doubt that no reasonable juror would have believed that people other than Mr. Dodson were harassed without also believing Dodson was harassed.

Further, under the circumstances of this case, the jury was not required to be unanimous regarding a particular “victim.” As long as each juror determined beyond a reasonable doubt that, on the date in question, the defendant made repeated contact with another person with the intent to annoy or harass that person, the jurors need not agree on who that person was.

And finally, Counts 6 and 7 involve texts sent only to Mr. Dodson and thus this argument does not apply.

Constitutionality

Defendant first urges this court to find Penal Code section 653m, subdivision (b) unconstitutional *as applied* to him, arguing that it violates his right to petition under the First Amendment. We decline to do so. The right to petition, like the right of free speech, is not absolute. (*Wolfgram v. Wells Fargo Bank* (1997) 53 Cal.App.4th 43, 56). Defendant’s right to “petition” his school district in good faith and in the normal course of business is clearly protected by the statute. Defendant’s abusive, threatening, and vulgar conduct, however, is not so

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protected. *People v. Powers* (2011) 193 Cal.App.4th 158, cited by defendant, is distinguishable in that, here, there are repeated implied threats of violence as well as vulgar and obscene language directed at a targeted individual. Further, to the extent that defendant's right to petition was, in any way, implicated by the court's no contact order, we similarly find no constitutional violation.

Defendant also argues that the statute is unconstitutionally vague. Issues concerning statutory interpretation are reviewed de novo. (*People v. Lofchie* (2014) 229 Cal.App.4th 240, 250.) Both *People v. Hernandez* (1991) 231 Cal.App.3d 1376, and *People v. Astalis* (2014) 226 Cal.App.4th Supp. 1 rejected vagueness and over breadth attacks on section 653m, subdivision (b). Defendant's arguments on appeal do not persuade us to rule otherwise. We believe, as did the *Hernandez* and *Astalis* courts, that the statute comports with due process because it provides a person of ordinary intelligence a reasonable opportunity to know what is prohibited so that they may act accordingly.

Instructing on Penal Code section 653m, subdivision (b) and good faith

Defendant argues that the trial court erred by declining to instruct the jury that the People must negate defendant's good faith by proof beyond a reasonable doubt. He is incorrect. "It is well-established that where a statute first defines an offense in unconditional terms and then specifies an exception to its operation, the exception is an affirmative defense to be raised and proved by the defendant. [Citations.] ...'" (*People v.*

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Fisher (2002) 96 Cal.App.4th 1147, 1151.) Good faith on behalf of the defendant does not negate an element of the crime here but rather describes an exception which protects constitutional conduct. (See analysis in *Astalis*, *supra*, 226 Cal.App.4th Supp. 1.) As such, the defendant has the burden of proof by a preponderance of the evidence and the trial court was not required to give the defense requested instruction.

In response to a jury question regarding the possibility of simultaneous intents by the defendant, the court instructed as follows: “*If you find there are simultaneous intents, to find the defendant guilty you must find beyond a reasonable doubt that one of the intents was to harass or annoy.*” Without deciding whether this instruction was correct, we find that, even if erroneous, the error was harmless beyond a reasonable doubt under the facts of this case. Again, a review of the emails and texts in this case leads to the conclusion that the evidence overwhelmingly proved that defendant’s repeated missives were not in good faith or in the ordinary course of business.⁵

Charging multiple counts

Defendant argues that charging five counts, for conduct that occurred over a course of several days, rather than one count, alleging a continuous course of conduct,

5. Other examples not yet listed include: “Along with that, you are also sniffing married and unmarried women pussies at BMS, inappropriately touching a female student,” and “Enemy of progress, embezzler, fraud, criminal, ass-sniffing dog, uncle Tom, punk -- ass, motherfucking pussy bitch, just some of your names, titles, Michael O’Brien Dodson.”

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denied him due process under the Fifth and Fourteenth Amendments. Counts One through Four related to contacts on April 26, 27, 28, and 29, respectively. Count Five related to contacts that occurred between April 30 and July 14. Defendant was only convicted of one count during the four-day period between April 26 and April 29 (Count 3, occurring on April 28). The conviction for Count Five related to a course of conduct between April 30 and July 14. Under the circumstances of this case, including defendant's defense of good faith on all of the charges, we find no violation of due process. Defendant was adequately able to defend against these charges.

Double Jeopardy

Defendant argues that the Double Jeopardy Clause in the United States and California constitutions prevents charging him with violating the court's no contact order because his OR (own recognizance) release was revoked and he was remanded to custody for the same conduct.⁶ We find that *People v. Johnson* (1993) 20 Cal.App.4th 106, 108, cited by defendant, is distinguishable from the circumstances here. Penal Code Section 166, subdivision (a)(4) specifically penalizes "[w]illful disobedience of the terms as written in any process or court order or out-of-stale court order, lawfully issued by a court, *including orders pending trial.*" (Italics added). This statutory language is unambiguous and applies to the court's pretrial order here. Additionally, defendant does not cite to any case for his proposition that requiring pre-trial bail constitutes "jeopardy" within the constitutional meaning,

6. Defendant was bailed out of custody on the same day.

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and we find no violation of double jeopardy under the circumstances here.

Ultimately, our review of this case is governed by article VI, section 13 of the California Constitution, which provides in part that a judgment cannot be set aside “... unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.” We find no miscarriage of justice here and affirm the convictions.

Unanimously affirmed.

KERRY WELLS
Presiding Judge, Appellate Division

CHARLES R. GILL
Judge, Appellate Division

GALE E. KANESHIRO
Judge, Appellate Division

11a

**APPENDIX B — SENTENCE OF THE SUPERIOR
COURT OF CALIFORNIA, COUNTY OF SAN
DIEGO, DATED AUGUST 7, 2015**

FOLDOUT

INFERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

☒ Central Division ☐ East County Division ☐ North County Division ☐ San Diego County Division

PEOPLE vs. Ogunsalu, Cornelius STATUS: Bond \$ 30,000 **0224** ☒ BB ☐ CB (Y/N)

CASE # M190960 PROS. # _____ DOB 041662 BKG # 15711365 CTS: 1 days _____ hrs.

DATE: 8/7/15 AT 9:00am DEPT. # 28 INTERP: _____ ☐ Spanish ☐ Sworn ☐ Oath on File

JUDGE/COMM/TEMP JUDGE: David M. Gill ☐ STIP. FILED REPORTER: _____

CLERK: K. Cersosimo ESR # - COUNTER # 0.00

CHARGE(S): Ct. 3 PC653m(b), Ct. 5 PC653m(b), Ct. 6 PC653m(b), Ct. 7 PC166(a)(4)

FUTURE DATES: _____ ☐ CONFIRMED ☐ VACATED

Taylor Heamsberger Matthew Sperdelozzi
 Attorney for the People (SDA/DCA/DAAG) Attorney for Defendant (PS/APD/OAG/Retained/Counseling) Supervised Cert. Legal Intern

DEFENDANT: ☒ PRESENT ☐ VIA AUDIO VIDEO ☐ SELF REPRESENTED ☐ NOT PRESENT ☐ NOT PRODUCED ☐ FAILED TO APPEAR

☒ Defendant waives arraignment for judgment: ☒ Imposition ☐ Execution of sentence suspended for 3 year(s) on Ct. 3 and _____ year(s) on Ct. _____

PROBATION IS ☒ GRANTED ☐ Summary ☐ Formal on the following conditions: ☐ DENIED and defendant sentenced as follows:

☒ Violate no laws ☐ Minor traffic violations are excepted ☐ No same or similar violations ☒ Comply with further conditions attached.

CUSTODY ☐ Commit to Sheriff for 1 days _____ hours _____ days suspended. ☐ Serve FORTHWITH

☐ Additional _____ days custody stayed pending: ☐ successful completion of probation ☐ review hearing ☐

☐ Report on _____ at _____ to: Detention Facility: ☐ Central ☐ Las Colinas ☐ Vista ☐ Work Furlough

☐ NO Early release (PC4018.6 or 4024.1) ☐ NO Work Release ☐ NO County Parole ☐ NO ESP/Home Detention

☐ _____ days CUSTODY SATISFIED BY _____ days PSP ☐ _____ days in _____ residential rehabilitation program.

☐ _____ days CUSTODY IN LIEU OF \$ _____ fine at \$ _____ per day ☐ _____ days PSP

☐ Consecutive to _____ concurrent with _____ ☐ above commit ☐ Consecutive weekends.

PAY ☐ Attorney Fees ** \$ _____ ☐ Indigent as to Attorney Fees Fine below includes PA per PC1465.7(a)

Fine (Ct. 3) \$ 220 Crim. Just. Admin Fee (GC29550 et seq.) \$ _____ AR/Installment Fee* (PC1205(e)) \$ _____

Admin Screen Fee (PC1463.07) \$ _____ Court Oper. Assess* (PC1465.8) \$ _____ TOTAL DUE: \$ _____

Restitution Fine (PC1202.4(b)) \$ _____ Crim. Conv. Assess* (GC70373) \$ _____ [Suspended Amount] \$ _____

Probation Revocation Restitution Fine imposed & suspended (PC1202.44) \$ 150 [Credit for _____ days served] \$ _____

☐ Payments set at \$ _____ per month beginning on _____ and on the _____ of each month thereafter until paid in full.

☐ Fines and fees stayed pending ☐ successful completion of probation ☐

*The court finds the defendant has the ability to repay the County of San Diego for costs of court appointed attorney fees (see reverse). * This order is not a condition of probation.

RESTITUTION ☐ Pay restitution to the victim of \$ _____ plus 10% annual interest on unsatisfied amount ☐ in an amount to be determined ☐ by Probation, payments through _____ Court Collections ☐ Revenue & Recovery ☐ at \$ _____ per month beg. _____ directly to the victim and show proof to the court ☐ by _____ at Review Hrg. ☐ See stipulated restitution order. ☐ Court retains jurisdiction re: restitution. ☐ Submit to civil process.

☐ Return to court upon reasonable notice by prosecutor.

PUBLIC SERVICE PROGRAM (PSP) ☒ Enroll within 60 days.

☐ Enroll by _____

30 days as a condition of probation ☐ reduction ☐ dismissal

_____ days in lieu of _____ fines/fees \$ _____ ☐ _____ days custody

30 days credit for time served/completed

TOTAL days to be completed _____

☐ One day per week ☐ Weekends only ☐ Out of county work authorized.

To run ☐ consecutive to _____ concurrent with _____ ☐ Submit proof to the court by _____ ☐ _____ days custody for each day/8 hrs missed.

ALCOHOL/DRUGS ☐ Abstain from alcohol. ☐ Do not be in places where you know or law enforcement has informed you that alcohol is the main item for sale, except in the course of employment. ☐ Not knowingly use or possess any controlled substance without a valid prescription. ☐ Submit to any test at the request of a peace officer for detection of alcohol/drugs in system.

FOURTH AMENDMENT WAIVER: Submit person, vehicle, place of residence, property, personal effects to search at any time with or without a warrant, and with or without reasonable cause, when required by a Probation Officer or other law enforcement officer. (to expire _____)

ENROLL IN & COMPLETE ☐ Anti-theft ☐ Graffiti ☒ Anger Mgmt. (12hr) ☐ Drug Ed. 101 - Fine on Ct. _____ will be deleted with proof of completion.

☐ _____ through _____ ☐ Individual Counseling ☐ wks ☐ mos. for _____

☐ Residential ☐ Outpatient alcohol/drug treatment program ☐ Submit to _____ Sheriff to administer ☐ HIV TEST per PC1202.1

☐ HIV/AIDS Education ☐ in custody ☐ as directed by Assessor. ☐ Attend _____ self-help meetings per _____ week ☐ month for _____ days / months.

☐ Out of County authorized. ☐ STAYED pending _____

☐ Satisfied by residential rehabilitation ☐ concurrent ☐ consecutive ☐ Commence/continue education, psychological, psychiatric, drug, alcohol or other rehab. program recom. by the Assessor and not leave or terminate such program without written permission of the court and/or therapist.

☐ Seek/maintain full-time employment, education, training, or a combination thereof. ☐ Submit ☐ TEST RESULTS ☐ proof of _____

☐ ENROLLMENT ☐ PROGRESS ☐ COMPLETION ☐ by _____ to the _____ Court ☐ at REVIEW HEARING(S) ☐ Assessment Unit

☐ And every 30 / 60 / _____ days THEREAFTER.

DRIVER LICENSE ☐ Do not drive without a valid license and liability insurance ☐ VC14607.6 advisal given. ☐ License is ☐ suspended ☐ revoked

☐ _____ days / years. ☐ pursuant to ☐ VC13202(a)(b) (controlled substance) ☐ VC13202.5 (under 21) ☐ VC13202.6 (graffiti)

☐ Surrender license to the court ☐ by _____ ☐ Deft. petitions for a restricted license. ☐ Critical need found. ☐ Petition is granted ☐ Petition is denied.

☐ License is restricted for _____ days ☐ mos. Driving is permitted to/from _____ work ☐ school ☐ court ordered activities ☐ in course of employment

Violence/Weapons ☐ Do not use force or violence upon another. ☐ Do not knowingly have contact with any victim or complaining witness in this matter.

☐ Do not knowingly own, transport, sell, or possess or control of weapons or firearms. ☐ Weapon(s) to be ☐ destroyed ☐ returned to _____

☐ Defendant advised that within 10 years of this conviction, owning/possessing/having custody or control of any firearm is a crime pursuant to PC29805.

☐ Notice of firearm prohibition given per PC29810. ☐ Federal weapons advisal given.

THEFT ☐ PC666 theft advisal given. ☐ Not knowingly possess any _____ burglary and/or vandalism tools ☐ checks, except payroll or government checks made payable to you, or any credit cards. ☐ Do not knowingly take, hold, or receive property of another without written consent of the owner.

MISC. ☒ Stay _____ away from See Attached Supplemental Minutes ☐ Do not knowingly unlawfully enter the United States.

☐ Register pursuant to ☐ HS11590 ☐ PC290 ☐ PC457.1. ☐ Provide DNA samples as directed by Sheriff or Probation Dept. (PC296).

☐ All property impounded, seized, or held in custody in this case to be disposed of per possessing agency's policy.

☐ People will not oppose defense motion to withdraw plea & enter a guilty/no contest plea to _____ as ☐ Inf. ☐ Misd. after _____ mo. successful probation.

☐ Obtain written consent of this court before leaving San Diego County or moving to another state.

☐ All _____ programs ☐ fines & fees are stayed. Within 72 hours of returning to the United States, report to the court for assignment/payment arrangements.

REFERRALS Report ☒ forthwith ☐ by _____ to _____ Assessment Unit ☐ Probation Dept. re: _____

☒ Court Collections ☐ Revenue & Recovery ☐ Collection Agency and comply with additional conditions of probation imposed.

☒ DEFENDANT IS ORDERED TO APPEAR ON 9-23-15 AT 8:00 a.m. IN DEPT. Room 1001 FOR: _____

☐ Sentencing ☐ Restitution ☐ Execution of Custody ☒ Review regarding Proof of completion of Anger Management

CUSTODY STATUS Defendant ☐ REMANDED to custody of Sheriff ☐ without bail ☐ with bail set at / increased to / reduced to \$ _____

☒ REMAINS AT LIBERTY ☐ RELEASED: ☐ on bail previously posted ☒ on probation ☐ after booking ☐ OR/SOR ☐ same terms and conditions

☐ to an authorized representative of: _____ on _____ at _____

☐ Previously ordered: ☐ 4th WAIVER ☐ continues ☐ deleted

For exhibits see Supplemental Minutes. The Defendant addresses the Court.

Sentencing as to Counts 5, 6 and 7 are same terms and conditions as count 3 and concurrent.

WARRANT ☐ Bench WARRANT ordered ☐ Bail set at \$ _____ ☐ No Bail ☐ Counsel reports no contact with defendant.

☐ Mandatory appearance ☐ Night service auth. ☐ Cash bail may be forfeited. ☐ ISSUED ON _____

☐ HOLD issuance to DATE ABOVE. ☐ Warrant previously ordered/issued ☐ remains outstanding ☐ rescinded ☐ RECALLED ON: _____

BAIL is ☒ exonerated ☐ forfeited ☐ Fine from bail, refund balance. ☐ Declaration of non-collusion/ re-assumption of liability filed.

☐ Bail forfeiture set aside, bond ☐ reinstated ☐ exonerated upon payment of court cost \$ _____ within 30 days ☐ cost waived

☒ Bond # SV50-4604434 Bond \$ \$30,000 Bond Company Seaview Insurance Company

Date: _____ ATTEST A TRUE COPY. Clerk of the Superior Court by _____ Deputy

Distribution by KC on 8/7/15 to: Jail Del. Atty. Proc. Prob. R&R Interp. Coord. Acct. Assessment Other. _____

MISDEMEANOR - JUDGMENT MINUTES

MA10 16

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Appendix B

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NOTICE PURSUANT TO CALIFORNIA RULES OF COURT, RULE 4.30b
You have the right to appeal the judgment of this court. If you wish to appeal, you must file a written notice of appeal within 30 days from the date of the judgment/order. You or your attorney must sign the notice. The notice must specify the judgment or order – or part of it – being appealed. If you do not have the financial ability to retain the services of an attorney to represent you on appeal, you can request the appointment of an attorney (misdemeanor convictions only).

NOTICE PURSUANT TO PENAL CODE SECTIONS 1203.4 & 1203.4A
On eligible offenses, after the lapse of one year from the date of pronouncement of judgment or on completion of probation, you may apply to the court to have your conviction set aside on showing of good conduct.

NOTICE PURSUANT TO PENAL CODE SECTION 1202.4(f)(11)
If you have any remaining unpaid balance on a restitution order or restitution fine 120 days prior to the completion of your term of probation, you are responsible for preparing and filing with the court a new and updated financial disclosure utilizing Defendant's Statement of Assets (Judicial Council Form #CR-115). This form is available at the court's website www.sdcourt.ca.gov. This form must be filed with the court no later than 90 days prior to the completion of your probation term.

NOTICE PURSUANT TO PENAL CODE SECTION 1214.1
Failure to comply with a court order may result in a warrant for your arrest and/or the suspension of your driver license. Your case may also be referred to a collection agency and a civil assessment may be added.

| | | | |
|---|--|--|--|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO CRIMINAL COURT LOCATIONS www.sdcourt.ca.gov | | | |
| Central Division County Courthouse 220 West Broadway San Diego, CA 92101 | East County Division 250 East Main Street El Cajon, CA 92020 | North County Division 325 S. Melrose Drive Vista, CA 92081 | South County Division 500 Third Avenue Chula Vista, CA 91910 |
| Court Reporter's Address: PO BOX 120128, San Diego, CA 92112 | | | |

| | | |
|---|---|---|
| SAN DIEGO COUNTY SHERIFF'S DEPARTMENT BOOKING FACILITIES www.sdsheriff.net/home | | |
| Central Detention 1173 Front Street P.O. Box 122952 San Diego, CA 92112 Information (619) 615-2700 | Las Colinas Detention 9000 Cottonwood Ave. Santee, CA 92071 Information (619) 258-3176 | Vista Detention 325 South Melrose Drive Vista, CA 92081 Information (760) 940-4473 |
| <i>If reporting for Book & Release, Custody, or Work Release bring photo ID</i> | | |

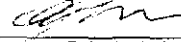
| | |
|--|--|
| ALTERNATE PUBLIC DEFENDER Central (619) 446-2900 East County (619) 441-4890 North County (760) 940-6450 South County (619) 498-2085 OFFICE OF ASSIGNED COUNSEL (619) 338-4800 PSP WORK PROJECT – PROBATION DEPT. Main Office (858) 560-3258 5201 Ruffin Road, Suite R. San Diego, CA 92123 Hall of Justice (619) 515-8202 330 West Broadway (5th Floor), San Diego, CA 92101 Ohio Street Office (619) 574-5599 3977 Ohio Street, San Diego, CA 92104 El Cajon Office (619) 441-3441 250 East Main Street (8th Floor), El Cajon, CA 92020 Vista Office (760) 806-2333 325 South Melrose Drive, Suite 2600, Vista, CA 92083 South Bay Office (619) 498-2111 1095 Bay Blvd., Chula Vista, CA 91911 | PUBLIC DEFENDER Central (619) 338-4700 East County (619) 579-3316 North County (760) 945-4000 South County (619) 498-2001 REVENUE AND RECOVERY Central (619) 515-6200 (619) 531-4066 East County (619) 441-4607 North County (760) 806-6396 SHORT TERM WORK FURLOUGH (619) 232-8600 5600 Overland Ave., Suite 190, San Diego, CA 92123 WORK RELEASE PROGRAM (619) 615-2487 |
|--|--|

**If the court has found that you have the ability to repay the County of San Diego for the costs of court appointed attorney fees and you do not agree, you have the right to a hearing. (PC997.8). The court will re-examine your present ability to repay. At that hearing you shall be entitled to, but shall not be limited to, all of the following rights:

1. The right to be heard in person.
2. The right to present witnesses and other documentary evidence.
3. The right to confront and cross-examine adverse witnesses.
4. The right to have the evidence against you disclosed to you.
5. The right to a written statement of the finding by the court.

AN ORDER BY THE COURT TO PAY ALL OR A PORTION OF THE COSTS OF YOUR COURT APPOINTED ATTORNEY HAS THE SAME FORCE AND EFFECT AS A JUDGMENT IN A CIVIL ACTION AND SHALL BE SUBJECT TO ENFORCEMENT IN THE SAME MANNER AS ANY OTHER MONEY JUDGMENT.

I HAVE RECEIVED A COPY AND UNDERSTAND THIS COURT ORDER.

| | | |
|--|----------------------------------|--|
|  Defendant's Signature | 858 242 8852 Telephone Number | D/121226 Driver License No. & State |
| 637 E 2nd St., National City Home Address | CA City | 91950 State Zip Code |

KEEP THIS DOCUMENT FOR REFERENCE
The court will NOT send you any other notification for future appearances

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Appendix B

FOLDOUT

SUPPLEMENTAL MINUTES

The following People's exhibits are marked for identification and received in evidence:

- 1- Document, 4 pages, email 6-19-13 4:54 a.m., Subject: MCMANUS, I SUGGEST YOU PETITION THE COURT AND EXONERATE ME!
- 2- Document, 6 pages, email 6-19-13 12:23 p.m., Subject: Judge Ahler, You are Irrelevant
- 3- Document, 10 pages, Form CH-100, Request for orders to Stop Harassment filed 5-27-11

Stay Away Order:

Defendant is ordered to stay 100 yards away from any San Diego Unified School District (SDUSD) property, except with express permission to conduct business relating to pending PERB complaint against SDUSD and/or potential civil lawsuit against SDUSD.

Defendant is ordered not to have any contact with any SDUSD personnel, including, but not limited to: Michael Dodson, Marco Samaniego, Precious Jackson-Hubbard, Jose Gonzalez, Andra Donovan, and Bernadette Nguyen.

The stay away order continues to apply to the individuals named above even if they separate from SDUSD.

Defendant is permitted to contact Amy Bozone, the SDUSD attorney that is handling Defendant's PERB complaint, as long as the communication relates to the PERB complaint and/or Defendant's potential civil suit.

**APPENDIX C— ORDER DENYING REHEARING
OF SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY
OF SAN DIEGO APPELLATE DIVISION,
FILED NOVEMBER 16, 2017**

SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY OF
SAN DIEGO APPELLATE DIVISION

Appellate Division Case No.: **CA263754**

Trial Court Case No.: M190960

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

CORNELIUS OGUNSALU,

Defendant-Appellant.

**ORDER DENYING PETITION FOR REHEARING
AND APPLICATION FOR CERTIFICATION TO
THE COURT OF APPEAL**

Appellant’s “Notice of Petition for Rehearing and or Petition for Certification to the Court of Appeal” filed on November 15, 2017 has been considered by Appellate Division Presiding Judge Kerry Wells and Appellate Division Judges Charles R. Gill and Gale E. Kaneshiro. Both the petition for rehearing and application for certification are denied. (Cal. Rules of Court, rules 8.889, 8.1005.)

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Appendix C

IT IS SO ORDERED.

Dated November 16, 2017

/s/: _____
Kerry Wells
Presiding Judge, Appellate Division

**APPENDIX D — DENIAL OF TRANSFER OF
THE COURT OF APPEAL, FOURTH APPELLATE
DISTRICT, DIVISION ONE, STATE OF
CALIFORNIA, FILED DECEMBER 19, 2017**

COURT OF APPEAL,
FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

D073243

THE PEOPLE

Plaintiff and Respondent,

v.

CORNELIUS OGUNSALU,

Defendant and Appellant.

(San Diego County Super. Ct. Nos.
CA263754 & M190960)

THE COURT:

The petition for transfer has been read and considered
by Justices Benke, Nares and Irion. The petition is denied.

BENKE, Acting P. J.